



N A R U C  
National Association of Regulatory Utility Commissioners

August 21, 2023

The Honorable Willie L. Phillips, Chairman  
The Honorable James Danly,  
The Honorable Allison Clements,  
The Honorable Mark C. Christie  
Federal Energy Regulatory Commission  
888 1st Street, NE  
Washington, DC 20426

Re: Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity, et al. (Docket No. RM22-17-000)

Dear Chairman and Commissioners:

As the Chair and Vice Chairs of the Committee on Gas of the National Association of Regulatory Utility Commissioners (“NARUC”), we are writing to express our concern around the issues raised by the Petitioners in the above-captioned matter, and our support for initiating a rulemaking to address the issue of interstate natural gas pipelines packaging non-contiguous and operationally unrelated capacity. The Petitioners, the American Gas Association, American Public Gas Association, Process Gas Consumers Group, and Natural Gas Supply Association, in their June 2, 2022 petition, request an inquiry into the practice of some pipelines to sell highly desirable capacity tied to non-contiguous less desirable capacity to determine whether this practice is unjust, unreasonable, and unduly discriminatory.<sup>1</sup> We urge the Federal Energy Regulatory Commission (“Commission”) to review its applicable regulations as requested by the Petitioners.

The NARUC Staff Subcommittee on Gas recently held a meeting where multiple examples of pipelines tying highly desirable capacity with non-contiguous, less desirable capacity were discussed. The practical result in each example was that the shippers were effectively forced to bid on undesirable and unnecessary non-contiguous segments of capacity to achieve the highest winning Net Present Value (“NPV”) or lose capacity on the desired segment.

It appears that this is becoming an increasingly common practice, where interstate natural gas pipelines are packaging high- market value capacity with non-contiguous, operationally unrelated capacity that would otherwise have little or no market value in a single auction. It is our understanding that pipelines set a NPV calculation to award the capacity in a manner that benefits shippers bidding on both packages, thereby effectively forcing shippers to bid on both

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<sup>1</sup> *Petition for Rulemaking to Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity*, Docket No. RM22-17-000 (June 2, 2022) (“Petition”).

packages if they want or need to acquire the desired capacity. Consequently, this practice can lead to an unnecessary increase in the cost of acquiring pipeline capacity to consumers while it enables pipelines to circumvent the Commission-approved, cost-based maximum rate set for the valuable capacity.

We are concerned with the potentially harmful impact this practice has on ratepayers. In regions with constrained pipeline infrastructure, the costs associated with natural gas price increases are passed directly to our consumers through fuel surcharges. The interstate pipelines' practice of marketing tied packages of capacity together in this manner contributes to higher delivered natural gas costs. As commissioners we are concerned with the impact of this practice on the consumers we seek to protect -- especially consumers in lower-income communities where higher energy prices have the greatest impact.

Further, this packaging of capacity has the potential to remove any financial incentives for pipelines to add capacity in regions with constrained pipeline capacity and creates a regulatory obstacle for gas utilities to serve their existing customers reliably at least cost.

As outlined by the Petitioners,<sup>2</sup> in *Natural Gas Pipeline of America*,<sup>3</sup> the Commission rejected proposals to tie non-contiguous segments of capacity into a single package for auctions, capacity allocations and rights of first refusal. Thereafter, in *Northern Border Pipeline*,<sup>4</sup> the Commission approved a tariff that allowed tying bids on non-contiguous segments of capacity in auctions, for purposes of determining the NPV and awarding capacity. However, the Commission held the policy that "permits packaging different capacity segments and firm services so long as shippers are not required to bid on segments of capacity that are not desired..."<sup>5</sup> In *Northern Border*, the Commission also stated that the tariff was approved expecting that this practice would benefit customers in future rate cases.<sup>6</sup>

Although suppliers have the option of filing a complaint with the Commission about specific behaviors where a pipeline may be unreasonably exhibiting market power, the number of examples cited by Petitioners and in additional comments filed in response to the Petition suggests a rulemaking is the appropriate venue to broadly consider this structural issue that has arisen in many states represented by the members of the Committee on Gas.

We appreciate the Commission considering our concerns amidst all the other issues that are before the Commission. The practice by pipelines of unnecessarily tying undesired non-contiguous segments of capacity in awarding capacity on highly desired capacity can place upward pressure on our state retail customers' rates in a period of already high resource costs across the country.

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<sup>2</sup> Petition at 6.

<sup>3</sup> *Natural Gas Pipeline of America*, 82 FERC 61,036 at 61,140 (1998).

<sup>4</sup> *Northern Border Pipeline*, 164 FERC 61,150 at P23 (2018).

<sup>5</sup> *Id.* at P 23.

<sup>6</sup> *Id.* at P 24.

We support timely Commission action to review and, if necessary, revise its regulations to protect consumers from unjust and unreasonable rates and provide all shippers with a fair and unencumbered opportunity to acquire pipeline capacity as envisioned in the Commission's open access regulatory regime, which may require prohibiting this practice.

Thank you for your attention to these matters and for your consideration.

Sincerely,

*Tammy Cordova*  
*of Nevada*  
Chair, NARUC Committee on Gas

*Julie Fedorchak*  
*of North Dakota*  
Vice-Chair, NARUC Committee on Gas

*Tricia Pridemore*  
*of Georgia*  
Chair, NARUC Subcommittee on Pipeline Safety